

AUG 22 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL N. MILBY, CLERK OF COURT

JANICE PARSONS

v.

LANDRY'S RESTAURANTS, INC.

§
§
§
§
§

CIVIL ACTION NO. _____

H-05-2971**PLAINTIFF'S ORIGINAL COMPLAINT**

Plaintiff, JANICE PARSONS, (Plaintiff) files this her Original Complaint complaining of LANDRY'S RESTAURANTS, INC. (Defendant) and would respectfully show as follows:

Jurisdiction and Venue

1. This is a suit for copyright infringement brought under 17 U.S.C. § 101 et. seq. (the Copyright Act). This Court has jurisdiction pursuant to 28 U.S.C. § 1338(a) which provides that the District Courts have original jurisdiction of any civil action arising under any act of Congress relating to copyrights.

2. Venue properly lies within this District pursuant to 28 U.S.C. § 1391 in that Defendant is subject to personal jurisdiction in this District and has its headquarters within this District in Houston, Texas. Also, the events giving rise to this claim occurred within this District.

The Parties

3. Plaintiff is an individual residing at 1201 Bering Drive # 74, Houston, Texas 77057. Plaintiff owns the copyrights to the artwork which is the subject of this lawsuit.

4. Defendant is a Delaware corporation with its principle place of business in Houston, Texas. Defendant's principle office is located at 1510 West Loop South, Houston, Texas 77027. Defendant may be served through its registered agent, Steven L. Scheinthal, at 1510 West Loop South, Houston, Texas 77027.

027651

Background Information

5. Plaintiff is an artist who created murals known as "Neapolitan Cartoon I" in 1988 and "Neapolitan Cartoon II" in 2002. Neapolitan I was located in the Grotto restaurant in the Highland Village shopping center in Houston, Texas which has since been demolished. Neapolitan II, which is in part a derivative work from Neapolitan I, is located in the Grotto restaurant located on Westheimer in Houston, Texas. Plaintiff was hired by the former owners of the Grotto restaurants to paint each mural. The murals were not "work made for hire" as that term is defined in § 101 of the Copyright Act as Plaintiff was not an employee of Defendant and there was no written agreement that the murals were to be considered "work made for hire". Ms. Parsons retained and owns the copyrights to both murals, and both have been filed for registration with the United States Copyright Office.

6. Defendant purchased the Grotto restaurants and recently opened a new location in The Woodlands. A mural was created in The Woodlands restaurant which is a copy of Neapolitan II (a derivative of Neapolitan I) and thus infringes on both of Ms. Parsons' copyrights. The Woodlands mural has the same characters and expressions, the same compositional elements and locations, the same colors and even includes Ms. Parsons' trademark signature, "The Big Picture." In summary, The Woodlands mural is a virtual replica of Plaintiff's copyrighted work.

Copyright Infringement

7. Plaintiff repeats and reasserts each of the allegations contained in the preceding paragraphs.

8. Plaintiff has exclusive ownership of Neapolitan I and Neapolitan II. The mural created by Defendants in their Woodlands restaurant and any similar artwork created in the future infringes upon Plaintiff's copyrights. Under 17 U.S.C. § 501, anyone who violates any of the exclusive rights of the copyright owner is an infringer.

Injunctive Relief

9. Plaintiff repeats and reasserts each of the allegations contained in the preceding paragraphs.

10. It is anticipated that Defendant will be opening additional Grotto restaurants and that Plaintiff's copyrighted artwork will be improperly reproduced in such restaurants. Temporary and permanent injunctive relief against such copyright infringement is appropriate.

Injunction and Damages

11. Plaintiff is entitled to a permanent injunction enjoining the Defendant from further acts of infringement, and actual damages suffered by Plaintiff or statutory damages under 17 U.S.C. § 504. Due to the willful infringement by Defendant the Court may increase the award of statutory damages to a sum of not more than \$150,000 per infringement. Pursuant to 17 U.S.C. § 505, Plaintiff is entitled to the recovery of full costs and reasonable attorney's fees as part of the costs.

12. Plaintiff hereby requests a trial by jury and as such requests that this case be placed upon this Court's jury docket.

WHEREFORE, Plaintiff prays that:

(a). This Court declare Plaintiff to be the owner of the copyrighted works identified herein, such copyrights being valid and infringed by Defendant;

(b). This Court grant an injunction prohibiting all future copyright infringement of the identified works by Defendant, its agents, servants, employees and all persons acting under their permission and authority pursuant to 17 U.S.C. § 502;

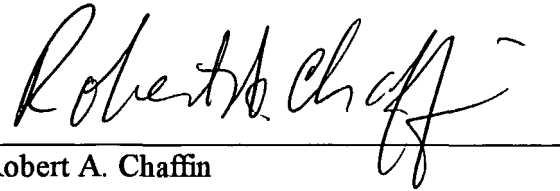
(c). This Court issue an injunction prohibiting all future copyright infringement of the identified works by Defendant, its agents, servants, employees and all persons acting under their permission and authority pursuant to 15 U.S.C. § 1114 and/or 1125;

(d). This Court order Defendants to pay actual or statutory damages as a result of copyright infringement, enhanced due to willful infringement pursuant to 17 U.S.C. § 504;

(e). That Plaintiff be awarded such other and further relief as she shows herself entitled and as is just and equitable.

Respectfully submitted,

CHAFFIN & STILES

A handwritten signature in black ink, appearing to read "Robert A. Chaffin", is written over a horizontal line.

Robert A. Chaffin
Texas State Bar No. 04057500
Federal Bar No. 5838
David (Trey) M. Stiles, III
Texas State Bar No. 00788473
Federal Bar No. 16820
7500 San Felipe, Suite 1030
Houston, Texas 77063
(713) 528-1000
(713) 952-5972/Fax

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Janice Parsons

DEFENDANTS

Landry's Restaurants, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David (Trey) Stiles, III
Chaffin & Stiles
7500 San Felipe, Ste. 1030
Houston, Texas 77063
(713) 528-1000

ATTORNEYS (IF KNOWN)

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
AUG 22 2005
MICHAEL N. MILBY, CLERK OF COURT

H-05-2971

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

17 U.S.C. Section 101 - The Copyright Act

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
08-19-05

SIGNATURE OF ATTORNEY OF RECORD

[Signature]